IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 328 of 2007
IN
CHAMBER SUMMONS NO. 534 OF 2006
IN
EXECUTION APPLICATION (L) NO.338 OF 2005

WITH

APPEAL NO. 329 of 2007
IN
CHAMBER SUMMONS NO. 530 OF 2006
IN
EXECUTION APPLICATION (L) NO.339 OF 2005

AND

APPEAL NO. 330 of 2007
IN
CHAMBER SUMMONS NO. 533 OF 2006
IN
EXECUTION APPLICATION (L) NO.209 OF 2005

H.K. Pujara Builders, a
partnership firm having its
office at 301, Krishna Kunj,
30 V.L. Mehta Marg, Vile Parle(W)
Mumbai 400 036. .. Appellants

versus

1. Payal Telefilms Pvt.Ltd. a
Company incorporated under the
Provisions of the Companies Act,1956
Having its registered office at
Venus Apartment, Flat no.101 A-A wing
1st floor, Samarth Cross Road No.4,

Lokhandwala Complex, Andheri(West)
Mumbai 400 058.

2. Reminiscent India Television Ltd.
a partnership firm having its office
at 301, Krishna Kunj, 30 V.L. Mehta
Marg, Vile Parle (West),
Mumbai 400 036. .. Respondents

...

Sarvasri Kishor Jain with Ms Kavita Shah i/b Atul Damle for the Appellants.

Shri D.D. Madon i/b M/s.Kanga & Co. for the Respondent No.1.

Mrs.A.R. Lambay i/b Lambay & Co. for Respondent No.2.

Mr.Vishal Kanade i/b U. Deshpande & Co. for interventionist - Kotak Mahindra Bank.

CORAM : R.M.S. KHANDEPARKAR
AND D.G.KARNIK, JJ

DATED : 11th June 2007.

**ORAL JUDGEMENT : (Per R.M.S.Khandeparkar, J)**

1. Since common question of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order.

2. Heard. Admit.

3. The present appeals arises from the order

dated 15th February 2007 passed in Chamber Summons No.530 of 2006 along with the connected Chamber Summons. By the impugned order, the Chamber Summons have been allowed and made absolute in terms of the prayer clause (a) with a rider that the appellants shall deposit a sum of Rs.2.45 crores payable by them as per the clause (b) of the conveyance and from the amount so deposited the three decrees in favour of the original applicants in the execution application shall be satisfied and if any amount remains after satisfying those decrees, the appellants shall be entitled to withdraw the balance amount.

4. Plain reading of the Chamber Summons discloses that the same were filed for a limited relief, which reads as under:-

> . That the Respondent No.2 be permitted by this Hon’ble Court to deal with and negotiate with Savoices Software Consultants Pvt.Ltd being the licensee of the 3rd floor premises of the building known as Guru Kripa situate at Veera Desai Road, Andheri (West), Mumbai 400

053 for obtaining vacant possession of the 3rd floor premises.

5. Undoubtedly, the relief which was sought for by the appellants in the Chamber Summons was to deal with and negotiate with the licencee for obtaining the possession of the third floor premises. It is not in dispute that in terms of the agreement which is claimed by the appellants and disputed by respondent no.2 that the balance amount was required to be paid at the time of obtaining possession of the premises. There is also an order dated 24th October 2005 passed in Chamber Summons no.1124 of 2005 whereby the respondent No.2 is required to seek leave of the court for negotiating with the third parties in relation to the suit premises. It is in that context that the Chamber Summons No.530 of 2006 was taken out and the relief as above was asked for. Being so, it was a limited relief in the nature of liberty to negotiate with the licensee that was asked for by the Chamber Summons no.530 of 2006. Undoubtedly, the execution applications which are referred to in the impugned order are pending and are to be decided in accordance with the provisions of

law. Hence, there was no justification for issuing direction to satisfy those decrees by the depositing the required amount in that regard in order to enable the party to negotiate with the licensee and to obtain the possession of the suit premises. The matter relating to the satisfaction of the decrees is required to be decided independently of the chamber summons. Being so, though the impugned order does not warrant any interference to the extent it makes the chamber summons absolute in terms of prayer clause (a) the further directions given by the impugned order cannot be sustained and are liable to be set aside for the reasons stated above. Needless to say that all the observations made in the impugned order by the learned Single Judge in relation to the need to satisfy all the decrees are required to be set aside. The learned Single Judge may decide the Execution Applications or any other chamber summons which may be taken out in the proceedings in question independently on their merits.

6. With these observations, the appeals are partly allowed. The directions issued beyond making the chamber summons absolute in terms of prayer clause (a) are hereby set aside. At the same time,

it is clarified that direction to deposit Rs.2.45 crores is maintained, subject to that the liability to deposit that amount shall be prior to obtaining the possession of suit premises and not for initiating the negotiation. It is therefore made clear that the appellants shall not be entitled to take possession unless the amount of Rs.2.54 crores are deposited in the court. On such deposit being made, the parties are at liberty to move for appropriate relief in that regard.

6. All the other contentions are kept open. There shall be no order as to costs.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)